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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,952	01/09/2002	Joseph Ross McNeal	501124.01	6374
7590	01/26/2004		EXAMINER	
Andrew F. Pratt, Esq. DORSEY & WHITNEY LLP Suite 3400 1420 Fifth Avenue Seattle, WA 98101			MORAN, KATHERINE M	
			ART UNIT	PAPER NUMBER
			3765	
			DATE MAILED: 01/26/2004	

12

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/043,952	MCNEAL, JOSEPH ROSS	
	<b>Examiner</b>	<b>Art Unit</b>	
	Katherine M Moran	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 November 2003.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2 and 4-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 6-21 is/are allowed.
- 6) Claim(s) 1,2,4,5 and 22-25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 09 January 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                     | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                            | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4,10</u> . | 6) <input type="checkbox"/> Other: _____ .                                   |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's amendment of 11/3/03 has been received and reviewed. Applicant amended claim 1, cancelled claim 3, and added new claims 22-25. The previously indicated allowable subject matter of claim 3 as disclosed in the Office Action of 7/9/03 has been withdrawn in light of newly discovered prior art to Ferrero et al. (U.S. 5,657,493).

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 5, and 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Ferrero (U.S. 5,657,493). Ferrero '493 discloses the invention as claimed. Ferrero teaches a buckle assembly for securing and adjusting a strap comprising a frame 30 having an exterior border and an interior border, the interior border having opposed regions, and a pivotable member 52 pivotably attached to two opposed portions 54 of the interior border, the pivotable member having a longitudinal axis and attached to a strap 40 along the longitudinal axis. The member 52 is selectively detachable to the degree that Applicant's pivotable member is selectively detachable since the member's two ends are held by bores 53 and the flexibility of the frame would allow for the frame to be manipulated to release the member from the bores. The frame further includes a flange 56 on the exterior border of the frame, the flange being located

along a region of the exterior border generally parallel to the longitudinal axis of the pivotable member.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferrero '493 in view of Chiang (U.S. 5,734,995). Ferrero discloses the invention substantially as claimed. However, Ferrero does not teach an elastic strap. Chiang '995 teaches goggles with an elastic strap 70. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the assembly of Ferrero with an elastic strap because this allows for the strap to accommodate a variety of head sizes.

***Allowable Subject Matter***

5. Claims 6-21 are allowable.

***Response to Arguments***

6. Applicant's request for initialed and signed copies of the IDS' of 1/9/02 and 6/23/03 is noted and requested copies are included with this Office Action.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications should be directed to Examiner Katherine Moran at (703) 305-0452. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, may be reached at (703) 305-1025. The official fax number for the organization where this application is assigned is (703) 872-9302. The after final fax number for this organization where this application is assigned is (703) 872-9303.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist at (703) 308-1148.

Kmm

January 15, 2004



Katherine Moran

Primary Examiner, AU 3765